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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number

116741-00215

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or  
printed  
name \_\_\_\_\_

Application Number

10/670,564

Filed

September 26, 2003

First Named Inventor

Edward A. Ashton

Art Unit

3736

Examiner

Shefali D. Patel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s)

Note: No more than five (5) pages may be provided.

Signature

I am the

Applicant/inventor

Assignee of record of the entire interest  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b)  
is enclosed. (Form PTO/SB/96)

Attorney or agent of record  
Registration number 35,126

Attorney or agent acting under 37 CFR 1.34  
Registration number if acting under 37 CFR 1.34

David J. Edmondson

Typed or printed name

202-772-5800

Telephone number

August 13, 2007

Date

Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.



## PATENT APPLICATION

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the PATENT application of )  
Edward A. Ashton ) Group Art Unit: 2624  
Application No.: 10/670,564 ) Examiner: Shefali D. Patel  
Filing Date: September 26, 2003 ) Attorney Docket No.: 116741-00215  
For: SEMI-AUTOMATED MEASUREMENT )  
OF ANATOMICAL STRUCTURES ) Date: August 13, 2007  
USING STATISTICAL AND MOR- )  
PHOLOGICAL PRIORS )

#### **STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In support of the Pre-Appeal Brief Request for Review filed concurrently herewith, the Applicant, through undersigned counsel, hereby makes the following statement.

In the Final Rejection, it is acknowledged that *Young et al* does not teach that the maximum likelihood classifier is a classifier which globally maximizes a discriminant function. Instead, the Final Rejection relies on *Bradshaw* for that teaching. However, the cited portion of *Bradshaw* does not say as much, but is instead silent on that matter. Therefore, the Applicant respectfully submits that the combination of references would not have resulted in the present claimed invention.

Also, the motivation stated in the Final Rejection to combine is “to separate classes, which are non-linearly separable....” However, the Final Rejection has not shown that a person having ordinary skill in the art would have recognized such a problem in *Young et al*.

On page 2 of the Final Rejection, a response is presented to counter the arguments which the Applicant previously submitted. However, that section of the Final Rejection does not discuss what *Young* teaches, but instead what it merely fails to exclude explicitly. A determination of obviousness is different from a determination of infringement; in the former, the issue is what the references teach, not merely what they fail to exclude explicitly. Therefore, the Applicant respectfully submits that that section of the Final Rejection is unavailing.

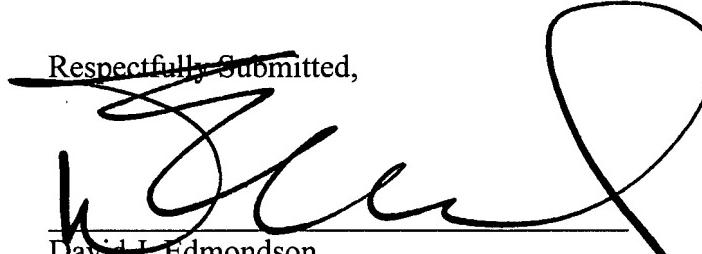
In response to the first argument in the Advisory Action, *Bradshaw* does not teach *globally* maximizing a discriminant function, as opposed to merely locally maximizing it. Therefore, the proposed combination of references would not have met that limitation.

Finally, the second argument in the Advisory Action is non-responsive to the Applicant's argument that it purportedly addresses.

In light of the above, the Applicants respectfully submit that the application is in condition for allowance. Notice of such allowance is earnestly solicited.

Please charge any shortage of fees, or credit any overpayment thereof, to BLANK ROME LLP, Deposit Account No. 23-2185 (117622-00105). In the event that a petition for an extension of time is required to render this Amendment timely, and in the event that a separate petition either does not accompany this Amendment or is insufficient to render this Amendment timely, the Applicants hereby petition under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render this Amendment timely. Any fee due is authorized above.

~~Respectfully Submitted,~~

  
David J. Edmondson  
Registration No. 35,126

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